

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAJAIRO BRAVO PEDROZA,  
Plaintiff,

No. C 12-1341 JST (PR)

v.

San Jose Police Officer PHAM, # 3759;  
et al.,

Defendants.

**ORDER FOR SERVICE OF  
PROCESS AND SCHEDULING**

The Court earlier determined that the complaint stated a claim under 42 U.S.C. § 1983 against San Jose police officer Pham for a violation of plaintiff's Fourth Amendment rights, and dismissed with leave to amend as to other claims and other defendants. See Docket # 4. Plaintiff never filed an amended complaint, and the deadline by which to do so has long passed. Accordingly, to move this action toward resolution, the Court now orders:

1. The complaint states a cognizable § 1983 claim against San Jose police officer Pham for a violation of plaintiff's Fourth Amendment rights. All other defendants and claims are dismissed.

2. The clerk shall issue a summons and the United States Marshal shall serve, without prepayment of fees, the summons, a copy of the complaint and a copy of all the documents in the case file upon San Jose police officer Pham (badge # 3759).

3. In order to expedite the resolution of this case, the following briefing schedule for dispositive motions is set:

1                   a.         No later than **91 days** from the date this order is filed, defendant must  
2 file and serve a motion for summary judgment or other dispositive motion. If defendant is of  
3 the opinion that this case cannot be resolved by summary judgment, defendant must so  
4 inform the Court prior to the date the motion is due. A motion for summary judgment also  
5 must be accompanied by a Rand notice so that plaintiff will have fair, timely and adequate  
6 notice of what is required of him in order to oppose the motion. Woods v. Carey, 684 F.3d  
7 934, 939 (9th Cir. 2012) (notice requirement set out in Rand v. Rowland, 154 F.3d 952 (9th  
8 Cir. 1998), must be served concurrently with motion for summary judgment). A motion to  
9 dismiss for failure to exhaust available administrative remedies similarly must be  
10 accompanied by a Wyatt notice. Stratton v. Buck, 697 F.3d 1004, 1008 (9th Cir. 2012).

11                   b.         Plaintiff's opposition to the summary judgment or other dispositive  
12 motion must be filed with the Court and served upon defendant no later than **28 days** from  
13 the date the motion is filed. Plaintiff must bear in mind the notice and warning regarding  
14 summary judgment provided later in this order as he prepares his opposition to any motion  
15 for summary judgment. Plaintiff also must bear in mind the notice and warning regarding  
16 motions to dismiss for non-exhaustion provided later in this order as he prepares his  
17 opposition to any motion to dismiss.

18                   c.         Defendant **shall** file a reply brief no later than **14 days** after the date the  
19 opposition is filed. The motion shall be deemed submitted as of the date the reply brief is  
20 due. No hearing will be held on the motion.

21                  4.         Plaintiff is advised that a motion for summary judgment under Rule 56 of the  
22 Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you  
23 must do in order to oppose a motion for summary judgment. Generally, summary judgment  
24 must be granted when there is no genuine issue of material fact – that is, if there is no real  
25 dispute about any fact that would affect the result of your case, the party who asked for  
26 summary judgment is entitled to judgment as a matter of law, which will end your case.  
27 When a party you are suing makes a motion for summary judgment that is properly  
28 supported by declarations (or other sworn testimony), you cannot simply rely on what your

1 complaint says. Instead, you must set out specific facts in declarations, depositions, answers  
2 to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the  
3 facts shown in the defendant's declarations and documents and show that there is a genuine  
4 issue of material fact for trial. If you do not submit your own evidence in opposition,  
5 summary judgment, if appropriate, may be entered against you. If summary judgment is  
6 granted, your case will be dismissed and there will be no trial. Rand v. Rowland, 154 F.3d  
7 952, 962-63 (9th Cir. 1998) (en banc) (App. A).

8 Plaintiff also is advised that a motion to dismiss for failure to exhaust available  
9 administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your case, albeit  
10 without prejudice. You must "develop a record" and present it in your opposition in order to  
11 dispute any "factual record" presented by defendant in his motion to dismiss. Wyatt v.  
12 Terhune, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003).

13 (The Rand and Wyatt notices above do not excuse defendant's obligation to serve said  
14 notices again concurrently with motions to dismiss for failure to exhaust available  
15 administrative remedies and motions for summary judgment. Woods, 684 F.3d at 939).

16 5. All communications by plaintiff with the Court must be served on defendant's  
17 counsel by mailing a true copy of the document to defendant's counsel. The Court may  
18 disregard any document which a party files but fails to send a copy of to his opponent. Until  
19 a defendant's counsel has been designated, plaintiff may mail a true copy of the document  
20 directly to defendant, but once a defendant is represented by counsel, all documents must be  
21 mailed to counsel rather than directly to that defendant.

22 6. Discovery may be taken in accordance with the Federal Rules of Civil  
23 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local  
24 Rule 16 is required before the parties may conduct discovery.

25 7. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep  
26 the Court informed of any change of address and must comply with the Court's orders in a  
27 timely fashion. Failure to do so may result in the dismissal of this action for failure to  
28

1 prosecute pursuant to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of  
2 change of address in every pending case every time he is moved to a new facility.

3       8. Plaintiff is cautioned that he must include the case name and case number for  
4 this case on any document he submits to the Court for consideration in this case.

5 || IT IS SO ORDERED.

6 || Dated: February 27, 2013

  
\_\_\_\_\_  
JON S. TIGAR  
United States District Judge